

In Illinois, lessors of tangible personal property under a true lease, except for automobiles leased for terms of one year or less, are considered to be the end users of the property to be leased. See 86 Ill. Adm. Code 130.2010. (This is a GIL).

October 24, 2000

Dear Ms. Xxxxx:

This letter is in response to your letter dated July 18, 2000 and our telephone conversation of October 17, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This is a request for a private letter ruling re: equipment manufactured by our company, COMPANY and leased in Illinois. We have attached pictures of similar equipment for further identification.

The facts are:

The equipment is manufactured by COMPANY and leased by COMPANY to companies performing highway construction work for individual states.

In this case the company is BUSINESS and TAXPAYER, A Joint Venture Company, located in CITY, Illinois. The equipment is being used in performance of Contract No. ##### at LOCATION for the Illinois Department of Transportation.

The equipment has never been used in the State of Illinois prior to this lease.

There is no possibility of buy-out of the equipment used in this lease.

The equipment consists of moveable highway construction barrier and a barrier transfer machine.

Per conversations with Margaret Chapman our company paid use tax on the depreciated value of the equipment of \$17,697.12.

Based on the nature of the lease agreement this cost was passed on to our customer.

The customer has responded with a letter stating the following:

In Illinois there is no tax on equipment or material rentals. Since the barriers were not manufactured for this project, no tax should be assessed for their use. Will you please outline for our accountants and the Illinois Department of Transportation who assessed this tax why, it was assessed, and where it was paid?

Please provide us with a letter stating the legal reasons why we are required to pay this tax so we can pass it on to our customer along with a request for payment.

Thank you.

Illinois taxes the retail sale and use of tangible personal property under two separate but percentage of their gross receipts from sales for use or consumption. 35 ILCS 120/1 et seq. The Use retailers. 35 ILCS 105/1 et seq.

leased for terms of one year or less, are considered to be the end users of the property to be leased. See the enclosed copies of 86 Ill. Adm. Code Sections 130.220 and 130.2010. As the end users of property. Since lessors are considered the end users of the property and have paid the Use Tax, no Retailers' Occupation Tax is imposed upon the rental receipts and the lessees incur no Use Tax

In Illinois, a true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the

The alternative to a true lease is a conditional sale. In Illinois, a conditional sale is usually characterized by a nominal purchase option at the close of the lease term. This type of transaction is Occupation Tax. See Section 130.2010. In this situation, lessors/retailers may give Certificates of Resale to their suppliers for tangible personal property transferred subject to a conditional sales they are received by the lessors/retailers. The lessees/purchasers owe corresponding Use Tax on the amount of the installment payments that are collected by the lessors/retailers. The agreement possibility of a buy-out of the equipment.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the

Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See subsection (a)(3) of the enclosed copy of 86 Ill. Adm. Code 150.310. If the tangible personal property was purchased outside of this State and used outside of this State prior to being brought into this State for use, the selling price upon which the Illinois Use Tax is computed is reduced by an amount representing a reasonable allowance for depreciation for the period of such out-of-State use. See the enclosed copy of 86 Ill. Adm. Code 150.105.

Please note that lessees do not incur any tax liability in a true lease situation. However, it is not unusual for true leases to contain contractual provisions stating that the lessees will reimburse the lessors for their tax costs. However, this is not a matter of Illinois tax law but of private agreement between lessors and lessees.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.